

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

Civil Action No.

OVERLOOK MASONIC HEALTH )  
CENTER, INC., formerly named )  
Masonic Nursing Home, Inc., )

Defendant. )

**05-40008**

RECEIPT # NA  
AMOUNT \$ 0  
SUMMONS ISSUED ✓  
LOCAL RULE 4.1 ✓  
WAIVER FORM ✓  
MCF ISSUED ✓  
BY DPTY. CLK. LH  
DATE 1-18-05

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through its undersigned attorneys, acting at the request of the Regional Administrator of the United States Environmental Protection Agency ("EPA") for Region I, files this Complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action for penalties brought under Section 309 (d) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(d), against the Overlook Masonic Health Center, Inc. ("Overlook Health"), formerly named Masonic Nursing Home, Inc. ("Masonic Home") (collectively, the "Defendant") for the violation of limitations and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit which EPA issued to Defendant on September 30, 1996, pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Defendant has violated the Permit by discharging pollutants

into an unnamed tributary of the Quinebaug River in excess of effluent limitations established by the Permit, and has failed to properly report its discharges as required by the Permit, in violation of Section 301 of the Act, 33 U.S.C. § 1311.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Notice of commencement of this action has been given to the Commonwealth of Massachusetts.

3. Venue is proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district in which the Defendant is located and in which the alleged violations occurred.

### **THE DEFENDANT**

4. Defendant is a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of doing business at 88 Masonic Home Road, Charlton, Massachusetts. Defendant is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

### **CLEAN WATER ACT STATUTORY REQUIREMENTS**

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except in

compliance with that Section, and, where applicable, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), establishes the NPDES permit program and authorizes the Administrator of the EPA to issue NPDES permits for the discharge of pollutants into navigable waters of the United States, upon such specific terms and conditions as the Administrator determines are necessary to carry out the provisions of the Act.

7. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief when any person is in violation of, *inter alia*, Section 301 of the Act, 33 U.S.C. § 1311, or is in violation of any permit condition or limitation contained in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation which takes place on or before January 30, 1997, and not to exceed \$27,500 per day for each violation which takes place between January 30, 1997, and March 14, 2004, and not to exceed \$32,500 for violations occurring after March 15, 2004, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L.

101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321).

### **GENERAL ALLEGATIONS**

9. Defendant owns and operates a facility in Charlton, Massachusetts for rest home care, skilled nursing care, and rehabilitation services.

10. Defendant has owned and operated a wastewater treatment facility (the “On-site WWTF”) on its property in Charlton, Massachusetts, which received sanitary wastewater from the Masonic Home’s facility. On information and belief, Masonic Home consisted of a 69-unit bed rest facility and 100-unit nursing facility during the period of violations described below. Until July 8, 2003, the On-site WWTF handled approximately 22,000 gallons per day of sanitary sewage, which was treated in settling tanks, a dosing chamber, sand filter beds, and a chlorine contact chamber, prior to the discharge of the effluent to an unnamed tributary of the Quinebaug River.

11. Pursuant to Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA issued NPDES Permit Number MA0025178 to the Defendant on September 30, 1996. At all times relevant hereto, the Permit remained in effect. See 40 C.F.R. § 122.6.

13. At all times relevant hereto, the Permit authorized the Defendant to discharge pollutants into the unnamed tributary of the Quinebaug River from the On-Site WWTF, subject to certain limitations and conditions, including, *inter alia*, effluent

limitations and monitoring and reporting requirements. The Permit required that Defendant meet effluent limitations for biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), pH, total residual chlorine (“TRC”), fecal coliform, total phosphorus, total ammonia nitrogen, and acute and chronic effluent toxicity. The Permit specified monitoring requirements, and required that the monitoring results were to be summarized and reported on monthly Discharge Monitoring Reports (“DMRs”).

14. Since at least 1992, inspectors from the Massachusetts Department of Environmental Protection (MA DEP) had noted operational problems at the Defendant’s On-Site WWTF. The MA DEP advised Defendant of violations of the Permit (or Defendant’s prior NPDES permit, effective from 1991 to 1996) which MADEP observed in inspections in 1992, 1994, and 1998. Starting in 1995, Masonic Home began to consider two options for managing its sanitary wastes -- either replacing and upgrading its obsolete On-Site WWTF, or constructing a sewer connection to the publicly-owned treatment works (“POTW”) operated by the Town of Charlton, Massachusetts. Between 1995 and 2003, Masonic Home undertook an eight-year review of alternatives regarding how to address its sanitary wastewater treatment requirements, but did not upgrade the On-Site WWTF or mitigate the ongoing violations.

15. On January 27, 2003, EPA and MA DEP inspected the On-Site WWTF and observed numerous violations of the Permit. On March 13, 2003, EPA issued a Finding of Violation and Order for Compliance (the “Administrative Order”) pursuant to Sections

308 and 309(a)(3) of the Clean Water Act. The Administrative Order required Masonic Home to connect all of its existing sewer flow to the municipal POTW operated by the Town of Charlton, Massachusetts, and to terminate the direct discharge of pollutants from its On-Site WWTF to the tributary to the Quinebaug River by September 1, 2003.

16. On information and belief, Defendant eliminated the discharge from the On-Site WWTF to the tributary of the Quinebaug River by October 2, 2003.

17. From prior to 1998 through October 2003, the Defendant “discharged pollutants” from the On-Site WWTF into the tributary to the Quinebaug River, within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), through a “point source,” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

18. The Quinebaug River flows to the Thames River, which is subject to the ebb and flow of the tide, and thence to Long Island Sound, a part of the Atlantic Ocean. All of these waters, including the unnamed tributary to the Quinebaug River, are “waters of the United States” as defined in 40 C.F.R. 122.2, and hence are “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

### **CLAIM FOR RELIEF**

#### **COUNT I - EFFLUENT LIMITATION VIOLATIONS**

19. Paragraphs 1 through 18 are realleged and incorporated by reference herein.

20. From at least October 1, 1998, to October 1, 2003, Defendant regularly discharged pollutants to an unnamed tributary of the Quinebaug River in excess of the

effluent limitations established in the Permit for biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), total residual chlorine (“TRC”), fecal coliform, total phosphorus, total ammonia nitrogen, and acute and chronic effluent toxicity. According to data reported by Defendant in its Discharge Monitoring Reports, during the 60-month period from October 1998 to September 2003, Defendant violated the effluent limitations for BOD in 47 months (or 78% of the months); the limitations for TSS in 47 months; the limitations for fecal coliform in 9 months; the limitation for phosphorus in 23 months; the limitation for total ammonia nitrogen in 32 months; the limitations for acute and chronic toxicity in 12 months; and the limitations for TRC in 9 months. Moreover, because of reporting violations described in Count II below, Defendant had additional and/or more significant violations of the limitations for TRC, BOD, TSS, phosphorous, ammonia nitrogen, and fecal coliform. By discharging pollutants in excess of the limitations contained in the Permit, Defendant violated the terms and conditions of its NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

#### **COUNT II - REPORTING VIOLATIONS**

21. Paragraphs 1 through 20 are realleged and incorporated by reference herein.

22. From at least October 1, 1998, to January 2003, Defendant failed to use an approved method for measuring Total Residual Chlorine, in violation of the terms and conditions of its NPDES Permit. The effluent limit specified in the Permit for TRC was expressed in micrograms per liter, but Masonic Home measured the effluent in milligrams

per liter. Thus, Defendant under-reported the TRC results by a factor of 1,000 on its required Discharge Monitoring Reports, in violation of the terms and conditions of its permit.

23. From 1998 to June 2003, Defendant miscalculated and misreported on its DMRs the monthly average and weekly average effluent monitoring results for BOD and TSS; the monthly average effluent monitoring results for phosphorus and ammonia nitrogen; and the geometric mean and daily maximum for fecal coliform. The correct calculations would have revealed additional and/or more significant violations of the effluent limitations for BOD, TSS, phosphorus, ammonia nitrogen, and fecal coliform.

24. In January 2003, Defendant monitored TSS, pH and TRC only five days per week, rather than daily as required by the Permit.

25. Defendant's failure to correctly sample and report its discharges of pollutants as required by the conditions of its Permit constitutes a violation of the terms and conditions of its NPDES permit issued pursuant to Section 402 of the Act, , 33 U.S.C. § 1342.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court enter judgment on behalf of the United States and against the Defendant Overlook Masonic Health Center, Inc. as follows:

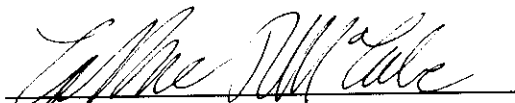


A. Assess civil penalties against Defendant pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), of up to \$25,000 per day for each day of violation that occurred on or before January 30, 1997, and \$27,500 per day for each day of violation that occurred between January 30, 1997, and October 1, 2003, for each violation of the Permit and the Act and the regulations promulgated thereunder;

B. Award the United States its costs in the action; and

C. Grant the United States such other relief as the Court deems appropriate.

For the United States of America,



CATHERINE McCABE

Deputy Section Chief

Environmental Enforcement Section

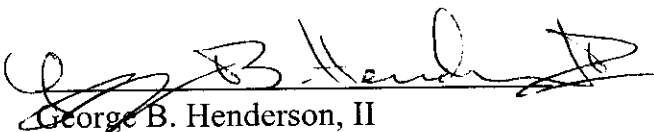
Environment and Natural Resources Division

U.S. Department of Justice

MICHAEL J. SULLIVAN

United States Attorney

By:



George B. Henderson, II

Assistant U.S. Attorney

John J. Moakley U.S. Courthouse

1 Courthouse Way, Suite 9200

Boston, MA 02210

(617) 748-3272

OF COUNSEL:

Margery Adams

Enforcement Counsel

U.S. Environmental Protection Agency

One Congress Street

Boston, MA 02114

Dated: January 14, 2005

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

## DEFENDANTS

OVERLOOK MASONIC HEALTH CENTER, INC.,  
formerly named Masonic Nursing Home,(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

05-40008

County of Residence of First Listed Defendant Worcester

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

## (c) Attorney's (Firm Name, Address, and Telephone Number)

George B. Henderson, II, AUSA  
1 Courthouse Way - Suite 9200  
Boston, MA 02210  
(617) 748-3272

## Attorneys (If Known)

Donald D. Cooper, Esq.  
Nixon Peabody  
100 Summer Street, Boston, MA 02110

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         |                            |                            |                                                               |                            |                            |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Section 309(b) of the Clean Water Act, 33 U.S.C. Section 1319(d), et seq.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S)

(See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

01-14-2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

05 - 40008

1. Title of case (name of first party on each side only) USA v. Overlook Masonic Health Center, Inc., f/n/a Masonic Nursing Home, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.

\*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division

Central Division

☒

Western Division

☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

☐

Central Division

☐

Western Division

☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME George B. Henderson, II, AUSA

ADDRESS U.S. Attorney's Office, 1 Courthouse Way - Suite 9200, Boston, MA 02210

TELEPHONE NO. (617) 748-3272